



General Assembly

**Substitute Bill No. 420**

February Session, 2008

\* SB00420PH 030708 \*

**AN ACT CONCERNING REVISIONS TO THE STATUTES OF THE  
OFFICE OF HEALTH CARE ACCESS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-638 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2008*):

3 (a) Except as provided in sections 19a-487a of the 2008 supplement  
4 to the general statutes and 19a-639a to 19a-639c, inclusive:

5 (1) Each health care facility or institution, that intends to (A) transfer  
6 all or part of its ownership or control, (B) change the governing powers  
7 of the board of a parent company or an affiliate, whatever its  
8 designation, or (C) change or transfer the powers or control of a  
9 governing or controlling body of an affiliate, shall submit to the office,  
10 prior to the proposed date of such transfer or change, a request for  
11 permission to undertake such transfer or change.

12 (2) Each health care facility or institution or state health care facility  
13 or institution, including any inpatient rehabilitation facility, which  
14 intends to introduce any additional function or service into its  
15 program of health care shall submit to the office, prior to the proposed  
16 date of the institution of such function or service, a request for  
17 permission to undertake such function or service.

18 (3) Each health care facility or institution or state health care facility  
19 or institution which intends to terminate a health service offered by  
20 such facility or institution or reduce substantially its total bed capacity,  
21 shall submit to the office, prior to the proposed date of such  
22 termination or decrease, a request to undertake such termination or  
23 decrease.

24 (4) Except as provided in sections 19a-639a to 19a-639c, inclusive,  
25 each applicant, prior to submitting a certificate of need application  
26 under this section or section 19a-639, or under both sections, shall  
27 submit a request, in writing, for application forms and instructions to  
28 the office. The request shall be known as a letter of intent. A letter of  
29 intent shall include: (A) The name of the applicant or applicants; (B) a  
30 statement indicating whether the application is for (i) a new,  
31 replacement or additional facility, service or function, (ii) the  
32 expansion or relocation of an existing facility, service or function, (iii) a  
33 change in ownership or control, (iv) a termination of a service or a  
34 reduction in total bed capacity and the bed type, (v) any new or  
35 additional beds and their type, (vi) a capital expenditure over three  
36 million dollars, (vii) the purchase, lease or donation acceptance of  
37 major medical equipment costing over three million dollars, (viii) a CT  
38 scanner, PET scanner, PET/CT scanner or MRI scanner,  
39 cineangiography equipment, a linear accelerator or other similar  
40 equipment utilizing technology that is new or being introduced into  
41 the state, or (ix) any combination thereof; (C) the estimated capital cost,  
42 value or expenditure; (D) the town where the project is or will be  
43 located; and (E) a brief description of the proposed project. The office  
44 shall provide public notice of any complete letter of intent submitted  
45 under this section or section 19a-639, or both, by publication in a  
46 newspaper having a substantial circulation in the area served or to be  
47 served by the applicant. Such notice shall be submitted for publication  
48 not later than [fifteen business] twenty-one days after [a  
49 determination] the date the office determines that a letter of intent is  
50 complete. No certificate of need application will be considered  
51 submitted to the office unless a current letter of intent, specific to the

52 proposal and in compliance with this subsection, has been on file with  
53 the office [at least] for not less than sixty days. A current letter of intent  
54 is a letter of intent that has been on file at the office up to and including  
55 one hundred twenty days, except that an applicant may request a one-  
56 time extension of a letter of intent of up to an additional thirty days for  
57 a maximum total of up to one hundred fifty days if, prior to the  
58 expiration of the current letter of intent, the office receives a written  
59 request to so extend the letter of intent's current status. The extension  
60 request shall fully explain why an extension is requested. The office  
61 shall accept or reject the extension request not later than [five business]  
62 seven days from the date the office receives such request and shall so  
63 notify the applicant.

64 (b) The office shall make such review of a request made pursuant to  
65 subdivision (1), (2) or (3) of subsection (a) of this section as it deems  
66 necessary. In the case of a proposed transfer of ownership or control,  
67 the review shall include, but not be limited to, the financial  
68 responsibility and business interests of the transferee and the ability of  
69 the institution to continue to provide needed services or, in the case of  
70 the introduction of a new or additional function or service expansion  
71 or the termination of a service or function, ascertaining the availability  
72 of such service or function at other inpatient rehabilitation facilities,  
73 health care facilities or institutions or state health care facilities or  
74 institutions or other providers within the area to be served, the need  
75 for such service or function within such area and any other factors  
76 which the office deems relevant to a determination of whether the  
77 facility or institution is justified in introducing or terminating such  
78 functions or services into or from its program. The office shall grant,  
79 modify or deny such request no later than ninety days after the date of  
80 receipt of a complete application, except as provided for in this section.  
81 Upon the request of the applicant, the review period may be extended  
82 for an additional fifteen days if the office has requested additional  
83 information subsequent to the commencement of the review period.  
84 The commissioner may extend the review period for a maximum of  
85 thirty days if the applicant has not filed in a timely manner

86 information deemed necessary by the office. Failure of the office to act  
87 on such request within such review period shall be deemed approval  
88 thereof. The ninety-day review period, pursuant to this subsection, for  
89 an application filed by a hospital, as defined in section 19a-490 of the  
90 2008 supplement to the general statutes, and licensed as a short-term  
91 acute-care general hospital or children's hospital by the Department of  
92 Public Health or an affiliate of such a hospital or any combination  
93 thereof, shall not apply if, in the certificate of need application or  
94 request, the hospital or applicant projects either (1) that, for the first  
95 three years of operation taken together, the total impact of the proposal  
96 on the operating budget of the hospital or an affiliate of such a hospital  
97 or any combination thereof will exceed one per cent of the actual  
98 operating expenses of the hospital for the most recently completed  
99 fiscal year as filed with or determined by the office, or (2) that the total  
100 capital expenditure for the project will exceed fifteen million dollars. If  
101 the office determines that an application is not subject to the ninety-  
102 day review period pursuant to this subsection, it shall remain so  
103 excluded for the entire review period of that application, even if the  
104 application or circumstances change and the application no longer  
105 meets the stated terms of the exclusion. Upon a showing by such  
106 facility or institution that the need for such function, service or  
107 termination or change of ownership or control is of an emergency  
108 nature, in that the function, service or termination or change of  
109 ownership or control is necessary to maintain continued access to the  
110 health care services provided by the facility or institution, or to comply  
111 with requirements of any federal, state or local health, fire, building or  
112 life safety code, the commissioner may waive the letter of intent  
113 requirement, provided such request shall be submitted [at least ten  
114 business] not less than fourteen days before the proposed date of  
115 institution of the function, service or termination or change of  
116 ownership or control.

117 (c) (1) The office may hold a public hearing with respect to any  
118 complete certificate of need application submitted under this section.  
119 At least two weeks' notice of such public hearing shall be given to the

120 applicant, in writing, and to the public by publication in a newspaper  
121 having a substantial circulation in the area served by the facility,  
122 institution or provider. At the discretion of the office, such hearing  
123 may be held in Hartford or in the area so served or to be served. In  
124 conducting its activities under this section, section 19a-639, or under  
125 both sections, the office may hold hearings on applications of a similar  
126 nature at the same time.

127       (2) The office may hold a public hearing after consideration of  
128 criteria that include, but need not be limited to, whether the proposal  
129 involves: (A) The provision of a new or additional health care function  
130 or service through the use of technology that is new or being  
131 introduced into the state; (B) the provision of a new or additional  
132 health care function or service that is not provided in either a region  
133 designated by the applicant or in the applicant's existing primary  
134 service area as defined by the office; or (C) the termination of an  
135 existing health care function or service, the reduction of total beds or  
136 the closing of a health care facility.

137       (3) The office shall hold a public hearing with respect to any  
138 complete certificate of need application submitted to the office under  
139 this section if (A) three individuals or an individual representing an  
140 entity with five or more people submit a request, in writing, that a  
141 public hearing be held on the proposal after the office has published  
142 notice of a complete letter of intent, and (B) such request is received by  
143 the office not later than twenty-one [calendar] days after the date that  
144 the office deems the certificate of need application complete.

145       [(d) For the purposes of this section, section 19a-639 or both  
146 sections, construction shall be deemed to have begun if the following  
147 have occurred and the office has been so notified in writing within the  
148 thirty days prior to the date by which construction is to begin: (1) All  
149 necessary town, state and federal approvals required to begin  
150 construction have been obtained, including all zoning and wetlands  
151 approvals; (2) all necessary town and state permits required to begin  
152 construction or site work have been obtained; (3) financing approval,

153 as defined in subsection (e) of this section, has been obtained; and (4)  
154 construction of a structure approved in the certificate of need has  
155 begun. For the purposes of this subsection, commencement of  
156 construction of a structure shall include, at a minimum, completion of  
157 a foundation. Notwithstanding the provisions of this subsection, upon  
158 receipt of an application filed at least thirty days prior to the date by  
159 which construction is to begin, the office may deem construction to  
160 have begun if (A) an owner of a certificate of need has fully complied  
161 with the provisions of subdivisions (1), (2) and (3) of this subsection;  
162 (B) such owner submits clear and convincing evidence that he has  
163 complied with the provisions of this subsection sufficiently to  
164 demonstrate a high probability that construction shall be completed in  
165 time to obtain licensure by the Department of Public Health on or  
166 before the date required in the certificate of need as the office may  
167 amend it from time to time; (C) construction of a structure cannot  
168 begin due to unforeseeable circumstances beyond the control of the  
169 owner; and (D) at least ten per cent of the approved total capital  
170 expenditure or two hundred fifty thousand dollars, whichever is  
171 greater, has been expended.

172 (e) Financing shall be deemed to have been obtained for the  
173 purposes of this section if the owner of the certificate of need has (1)  
174 received a final commitment for financing in writing from a lender, or  
175 (2) provided evidence to the office that the owner has sufficient funds  
176 available to construct the project without financing.

177 (f) The General Assembly finds evidence of insufficient need for all  
178 the nursing home beds approved by the Office of Health Care Access  
179 but not yet constructed and finds allowing unnecessary beds and  
180 facilities to be built will result in severely damaging economic  
181 consequences to the state and to consumers. All certificates of need for  
182 nursing home beds granted pursuant to this section shall expire on  
183 June 9, 1993, except (1) beds for which an application for financing was  
184 received and deemed complete by the Connecticut Health and  
185 Educational Facilities Authority prior to March 1, 1993; (2) beds  
186 restricted to use by patients with acquired immune deficiency

187 syndrome or traumatic brain injury; (3) beds associated with a  
188 continuing care facility which guarantees life care for its residents as  
189 defined in subsection (b) of section 17b-354; (4) beds authorized under  
190 a certificate of need for an addition of five beds in a facility which has  
191 undertaken the addition of ten beds pursuant to section 17b-351; and  
192 (5) beds for which twenty-five per cent of project costs have been  
193 expended prior to June 9, 1993, as submitted to the Office of Health  
194 Care Access in the form of a report prepared by a certified public  
195 accountant having no affiliation with the owner of the certificate of  
196 need or the developer of the project. A certificate of need which has  
197 expired pursuant to this subsection may be reauthorized by the Office  
198 of Health Care Access, provided need for nursing home beds exists  
199 and twenty per cent or more of the project costs have been expended  
200 by June 9, 1993. A request for reauthorization shall be submitted to the  
201 Office of Health Care Access no later than July 15, 1993. The office shall  
202 issue a decision on such request within forty-five days of receipt of  
203 documentation necessary to determine expended project costs. Project  
204 expenditures shall cease from June 9, 1993, until reauthorization by the  
205 office. Evidence of project costs expended shall be submitted in the  
206 form of a report prepared by a certified public accountant having no  
207 affiliation with the owner of the certificate of need or the developer of  
208 the project. For the purposes of this section, "need for nursing home  
209 beds" means there is a demonstrated bed need in the towns within  
210 twenty miles of the town in which the facility is proposed to be  
211 located, including the town of the proposed location, as listed in the  
212 March 1, 1974, official mileage table of the Public Utilities Commission.  
213 Bed need shall be projected no more than five years into the future at  
214 ninety-seven and one-half per cent occupancy using the latest official  
215 population projections by town and age as published by the Office of  
216 Policy and Management and the latest available nursing home  
217 utilization statistics by age cohort from the Department of Public  
218 Health. For the purposes of this subsection, "project costs" means the  
219 capital costs approved by the Office of Health Care Access in the  
220 certificate of need, exclusive of the cost of land acquisition. Owners of  
221 certificates of need for nursing home beds which have expired may

222 apply to the Commissioner of Social Services for compensation on or  
223 after June 29, 1993, but no later than September 1, 1993. Such  
224 compensation shall be limited to actual verifiable losses which directly  
225 result from the expiration of the certificate of need pursuant to this  
226 subsection and which cannot be otherwise recouped through the  
227 mitigating efforts of the owner, excluding consequential and incidental  
228 losses such as lost profits. Such compensation shall not exceed an  
229 amount approved by the office within the certificate of need unless the  
230 commissioner determines it is reasonable or cost-effective to  
231 compensate the excess amount. Notwithstanding any provision of this  
232 subsection, no compensation shall be provided to an owner of a  
233 certificate of need whose ability to implement the certificate of need is  
234 contingent on the outcome of a legal action taken against the owner  
235 until the owner obtains a final decision in his favor. An owner  
236 aggrieved by the amount of compensation determined by the  
237 commissioner may request a hearing in accordance with the provisions  
238 of sections 17b-61 and 17b-104. The commissioner may so compensate  
239 an owner of a certificate of need for nursing home beds who  
240 volunteers to relinquish such a certificate, provided the request for  
241 compensation is received by the commissioner prior to July 15, 1993.  
242 The commissioner shall notify such an owner as to whether he will be  
243 compensated within forty-five days from receipt of notice of voluntary  
244 relinquishment or forty-five days of June 29, 1993, whichever is later.]

245 Sec. 2. Subdivisions (2) and (3) of subsection (b) of section 19a-639  
246 of the 2008 supplement to the general statutes are repealed and the  
247 following is substituted in lieu thereof (*Effective July 1, 2008*):

248 (2) An applicant, prior to submitting a certificate of need  
249 application, shall submit a request, in writing, for application forms  
250 and instructions to the office. The request shall be known as a letter of  
251 intent. A letter of intent shall conform to the letter of intent  
252 requirements of subdivision (4) of subsection (a) of section 19a-638, as  
253 amended by this act. No certificate of need application will be  
254 considered submitted to the office unless a current letter of intent,  
255 specific to the proposal and in compliance with this subsection, is on



256 file with the office for [at least] not less than sixty days. A current letter  
257 of intent is a letter of intent that has been on file at the office no more  
258 than one hundred twenty days, except that an applicant may request a  
259 one-time extension of a letter of intent of [up to] not more than an  
260 additional thirty days for a maximum total of [up to] not more than  
261 one hundred fifty days if, prior to the expiration of the current letter of  
262 intent, the office receives a written request to so extend the letter of  
263 intent's current status. The extension request shall fully explain why an  
264 extension is requested. The office shall accept or reject the extension  
265 request not later than [five business] seven days from the date the  
266 office receives the extension request and shall so notify the applicant.  
267 Upon a showing by such facility or institution that the need for such  
268 capital program is of an emergency nature, in that the capital  
269 expenditure is necessary to maintain continued access to the health  
270 care services provided by the facility or institution, or to comply with  
271 any federal, state or local health, fire, building or life safety code, the  
272 commissioner may waive the letter of intent requirement, provided  
273 such request shall be submitted [at least ten business] not less than  
274 fourteen days before the proposed initiation date of the project. The  
275 commissioner shall grant, modify or deny such request not later than  
276 ninety days or not later than [ten business] fourteen days, as the case  
277 may be, after receipt of such request, except as provided for in this  
278 section. Upon the request of the applicant, the review period may be  
279 extended for an additional fifteen days if the office has requested  
280 additional information subsequent to the commencement of the review  
281 period. The commissioner may extend the review period for a  
282 maximum of thirty days if the applicant has not filed, in a timely  
283 manner, information deemed necessary by the office. Failure of the  
284 office to act upon such request within such review period shall be  
285 deemed approval of such request. The ninety-day review period,  
286 pursuant to this section, for an application filed by a hospital, as  
287 defined in section 19a-490 of the 2008 supplement to the general  
288 statutes, and licensed as a short-term acute care general hospital or a  
289 children's hospital by the Department of Public Health or an affiliate of  
290 such a hospital or any combination thereof, shall not apply if, in the

291 certificate of need application or request, the hospital or applicant  
292 projects either (A) that, for the first three years of operation taken  
293 together, the total impact of the proposal on the operating budget of  
294 the hospital or an affiliate or any combination thereof will exceed one  
295 per cent of the actual operating expenses of the hospital for the most  
296 recently completed fiscal year as filed with the office, or (B) that the  
297 total capital expenditure for the project will exceed fifteen million  
298 dollars. If the office determines that an application is not subject to the  
299 ninety-day review period pursuant to this subsection, it shall remain  
300 so excluded for the entire period of that application, even if the  
301 application or circumstances change and the application no longer  
302 meets the stated terms of the exclusion. The office shall adopt  
303 regulations, in accordance with chapter 54, to establish an expedited  
304 hearing process to be used to review requests by any facility or  
305 institution for approval of a capital expenditure to establish an energy  
306 conservation program or to comply with requirements of any federal,  
307 state or local health, fire, building or life safety code or final court  
308 order. The office shall adopt regulations in accordance with the  
309 provisions of chapter 54 to provide for the waiver of a hearing for any  
310 part of a request by a facility or institution for a capital expenditure,  
311 provided such facility or institution and the office agree upon such  
312 waiver.

313 (3) The office shall comply with the public notice provisions of  
314 subdivision (4) of subsection (a) of section 19a-638, as amended by this  
315 act, and shall hold a public hearing with respect to any complete  
316 certificate of need application filed under this section, if: (A) The  
317 proposal has associated total capital expenditures or total capital costs  
318 that exceed twenty million dollars for land, building or nonclinical  
319 equipment acquisition, new building construction or building  
320 renovation; (B) the proposal has associated total capital expenditures  
321 per unit or total capital costs per unit that exceed three million dollars  
322 for the purchase, lease or donation acceptance of major medical  
323 equipment; (C) the proposal is for the purchase, lease or donation  
324 acceptance of equipment utilizing technology that is new or being

introduced into the state, including scanning equipment, cineangiography equipment, a linear accelerator or other similar equipment; or (D) three individuals or an individual representing an entity comprised of five or more people submit a request, in writing, that a public hearing be held on the proposal and such request is received by the office not later than twenty-one [calendar] days after the office deems the certificate of need application complete. At least two weeks' notice of such public hearing shall be given to the applicant, in writing, and to the public by publication in a newspaper having a substantial circulation in the area served by the applicant. At the discretion of the office, such hearing shall be held in Hartford or in the area so served or to be served.

Sec. 3. Section 19a-639e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2008*):

Notwithstanding the provisions of sections 19a-486 to 19a-486h, inclusive, section 19a-638, as amended by this act, 19a-639 of the 2008 supplement to the general statutes, as amended by this act, or any other provision of this chapter, the Office of Health Care Access may refuse to accept as filed or submitted a letter of intent or a certificate of need application from any person or health care facility or institution that failed to submit any required data or information, or has filed any required data or information that is incomplete or not filed in a timely fashion. Prior to any refusal and accompanying moratorium under the provisions of this section, the Commissioner of Health Care Access shall notify the person or health care facility or institution, in writing, and such notice shall identify the data or information that was not received and the data or information that is incomplete in any respect. Such person or health care facility or institution shall have [fifteen business] twenty-one days from the date of mailing the notice to provide the commissioner with the required data or information. Such refusal and related moratorium on accepting a letter of intent or a certificate of need application may remain in effect, at the discretion of the Commissioner of Health Care Access, until the office determines that all required data or information has been submitted. The

359 commissioner shall have [~~fifteen business~~] twenty-one days to notify  
360 the person or health care facility or institution submitting the data and  
361 information whether or not the letter of intent or certificate of need  
362 application is refused. Nothing in this section shall preclude or limit  
363 the office from taking any other action authorized by law concerning  
364 late, incomplete or inaccurate data submission in addition to such a  
365 refusal and accompanying moratorium.

366       Sec. 4. Subsection (b) of section 19a-681 of the general statutes is  
367 repealed and the following is substituted in lieu thereof (*Effective July*  
368 *1, 2008*):

369       (b) If the billing detail by line item on a patient bill does not agree  
370 with the detailed schedule of charges on file with the office for the date  
371 of service specified on the bill, the hospital shall be subject to a civil  
372 penalty of five hundred dollars per occurrence payable to the state  
373 [~~within ten business~~] not later than fourteen days after the date of  
374 notification. The penalty shall be imposed in accordance with  
375 subsections (b) to (e), inclusive, of section 19a-653. The office may issue  
376 an order requiring such hospital, [~~within ten business~~] not later than  
377 fourteen days after the date of notification of an overcharge to a  
378 patient, to adjust the bill to be consistent with the schedule of charges  
379 on file with the office for the date of service specified on the patient  
380 bill.

381       Sec. 5. Subsection (b) of section 17b-351 of the general statutes is  
382 repealed and the following is substituted in lieu thereof (*Effective July*  
383 *1, 2008*):

384       (b) The General Assembly finds evidence of insufficient need for all  
385 the nursing home beds permitted pursuant to subsection (a) of this  
386 section, but not licensed by the Department of Public Health and finds  
387 allowing unnecessary beds to be licensed will result in severely  
388 damaging economic consequences to the state and to consumers. An  
389 addition of beds initiated pursuant to this section shall be licensed no  
390 later than June 9, 1993. A facility which has initiated the addition of

391 beds but has not obtained licensure of such beds, may, no later than  
392 July 15, 1993, apply to the Office of Health Care Access for  
393 authorization to proceed with completion of the additional beds and  
394 application for licensure, provided (A) plans for the additional beds  
395 have been approved by the Department of Public Health pursuant to  
396 section 19-13-D-8t(v)(4) of the Public Health Code no later than June 1,  
397 1993, and (B) twenty-five per cent of estimated project costs have been  
398 expended no later than June 9, 1993, provided project costs may not  
399 exceed thirty-one thousand two hundred eleven dollars per bed. The  
400 office shall issue a decision on such application within forty-five days  
401 of receipt of documentation necessary to determine expended project  
402 costs. Evidence of project costs expended shall be submitted in the  
403 form of a report prepared by a certified public accountant having no  
404 affiliation with the owner of the facility or the developer of the project.  
405 The owner of a facility for which completion of additional beds is not  
406 so authorized may apply to the Commissioner of Social Services for  
407 compensation on or after June 29, 1993, but no later than September 1,  
408 1993, provided plans for the additional beds have been approved by  
409 the Department of Public Health no later than June 1, 1993. Such  
410 compensation shall be limited to actual verifiable losses which directly  
411 result from the failure to gain authorization pursuant to this subsection  
412 and which cannot be otherwise recouped through the mitigating  
413 efforts of the owner, excluding consequential and incidental losses  
414 such as lost profits. In no event may such compensation exceed project  
415 costs. An owner aggrieved by the amount of compensation determined  
416 by the commissioner may request a hearing in accordance with the  
417 provisions of sections 17b-60 and 17b-61. [This subsection shall not  
418 apply to any addition of beds pursuant to this section which is part of  
419 a construction project that also includes an addition of beds authorized  
420 pursuant to subdivision (4) of subsection (f) of section 19a-638.]

421       Sec. 6. (*Effective July 1, 2008*) Section 19a-611 of the general statutes is  
422 repealed.

|   |                     |                       |
|---|---------------------|-----------------------|
| This act shall take effect as follows and shall amend the following sections: |                     |                       |
| Section 1   | <i>July 1, 2008</i> | 19a-638               |
| Sec. 2  | <i>July 1, 2008</i> | 19a-639(b)(2) and (3) |
| Sec. 3  | <i>July 1, 2008</i> | 19a-639e              |
| Sec. 4  | <i>July 1, 2008</i> | 19a-681(b)            |
| Sec. 5  | <i>July 1, 2008</i> | 17b-351(b)            |
| Sec. 6  | <i>July 1, 2008</i> | Repealer section      |

***Statement of Legislative Commissioners:***

In subsection (a) of section 1, the reference to the 2008 supplement to the general statutes following the string citation was deleted for clarity.

***PH***            *Joint Favorable Subst.-LCO*